



## CITY OF DURHAM | NORTH CAROLINA

**Date:** September 17, 2013

**To:** Thomas J. Bonfield, City Manager  
**Through:** Keith Chadwell, Deputy City Manager  
**From:** Kevin Dick, Director- Office of Economic and Workforce Development (OEWD)

**Subject:** Amendment to Ninth Street Infrastructure Project Development Agreement Between the City of Durham and CPGPI Regency Development, LLC

### Executive Summary

This item has been prepared to recommend an amendment to a public-private redevelopment agreement between the City of Durham and CPGPI Regency Development LLC (Regency) for a redevelopment project, involving both private investment and public infrastructure improvements. The public infrastructure improvements are to be funded through new tax revenues generated by adjoining new development.

### Recommendation

Staff recommends that City Council:

- 1) Adopt an ordinance amending the General Capital Improvement Project Ordinance, Fiscal Year 2013-2014, as amended, the same being Ordinance # 14464 for the purpose of adding funding in the amount of \$1,039,687.00 for the Ninth Street Infrastructure Redevelopment project;
- 2) Authorize the City Manager to execute an Amendment to the Agreement for the Redevelopment and Renovation of the Durham Ninth Street Commercial District with CPGPI Regency Erwin Development, LLC to perform engineering, preconstruction services and streetscape improvements on Ninth Street in an amount not to exceed \$909,687.32;
- 3) Authorize the City Manager to accept a Guaranteed Maximum Price (GMP) for the Streetscape Construction work based upon the final scope of work and design described in the agreement, as amended, so long as the construction costs does not exceed Streetscape Improvements Budget of \$869,687.32;
- 4) Establish a contingency fund for the Streetscape Improvement Budget in the amount of \$130,000.00, and authorize the City Manager or his designee to negotiate and

execute change orders to the agreement so long as the streetscape total construction budget does not exceed \$909,687.32 and the total agreement amount does not exceed \$1,039,687.32;

5) Authorize the City Manager to negotiate, execute and accept a tree maintenance and conservation easement for a strip of land (approximately 5 feet wide) running the length of the west side of the Ninth Street streetscape project between the sidewalk and private property owner(s).

### **Background**

On June 17, 2013, the Durham City Council approved a public-private redevelopment agreement with CPCGI Regency Erwin LLC (Regency) that would entail Regency providing oversight and contract administration for public infrastructure work that would be funded by the incremental taxes projected to be derived from the private development and redevelopment along Ninth Street. The agreement was constituted in order to address both parking and infrastructure challenges including the following:

- a lack of adequate lighting;
- deteriorating sidewalks;
- disorganized signage
- a lack of aesthetically pleasing amenities
- lack of parking

The overall projected cost of the infrastructure improvements as proposed by Regency is \$1,039,687.32, which is the City of Durham's contribution to the public-private redevelopment project improvements. This includes design costs and preconstruction services costs. The coordination of both the City of Durham CIP funds in conjunction with private sector investment will benefit the City and the Ninth Street business community.

### **Issues and Analysis**

#### **Development Agreement**

Since the agreement that was approved on June 17, 2013, City staff has met with the development team to refine cost estimates and the proposed scope of work. At the time of approval in June, staff had advised the City Council that the guaranteed maximum price and scope of work could change based upon continued negotiations and discussions with City staff related to the following:

- street re-surfacing
- the placement of trees
- the amount and placement of lighting

The funding source for the proposed public streetscape improvements is the projected tax revenue amount that would accrue due to the commercial and residential

development slated to occur on the west side of Ninth Street in West Durham. The planned developments (including those currently under construction) are as follows:

<b>Development Component</b>	<b>Dollar Value</b>	<b>Estimated Incremental Tax Revenue</b>
- (303 apts/ parking deck (408 spaces); - new development (grocery store)	\$47,000,000.00	\$283,374.94
- construction of 125 room Hilton Garden Inn Hotel	\$10,361,915.00	\$47,747.19
- commercial re- development (retail shops)	\$1,322,891.63	\$7,507.41
<b>TOTAL</b>	<b>\$59,822,891.63</b>	<b>\$338,629.54</b>

The new grocery store and the commercial re-development of shops are projects being undertaken by Regency. The apartments are being developed by Crescent Resources. The Hilton Garden Inn Hotel is under construction at the intersection of Ninth and Main Streets by the Olympia Development Hotels.

### **Public Streetscape Improvements**

As part of the negotiated private-public redevelopment, amendment Regency will be responsible for completing certain minimum private investment while also implementing public streetscape improvements to be paid for by the City. The preliminary scope of the public streetscape improvements includes the following elements:

#### Lighting

In order to help satisfy lighting concerns, Regency will install decorative light poles in locations that will be determined based upon construction drawings and plans. Regency will be responsible for assisting the City in obtaining all necessary approvals from the Duke Energy and North Carolina Department of Transportation as appropriate. The current estimate of the lighting cost is \$219,687.00.

### Tree Maintenance and Conservation Easement

The proposed streetscape improvements include removal of existing trees, re-planting and placement of benches along a strip of land between the west side of Ninth Street right-of-way and the property of Regency. In order to preserve and incorporate these improvements into the streetscape project, Regency has agreed to deed to the City a tree maintenance and conservation easement whereby current and future property owners will be responsible for maintaining the easement strip.

### Sidewalk and Curb Re-Construction<sup>1</sup>

- Regency will commit to the design and re-construction of approximately 1,200 linear feet of sidewalks, including, but not limited to, (a) demolition of sidewalk, curb & gutter, (b) installation of sidewalk and brick pavers, 24" curb & gutter, driveways, curb cut ramps; (c) addition of new benches, trash cans, repaving, and restriping, resetting water meters, manhole adjustments, installation of drainage flumes, and utility box adjustments. The re-construction activities shall adhere to all City designs and construction plans and be approved by the City and the North Carolina Department of Transportation;
- Regency will allow encroachment upon its property lines to the extent required in order to re-construct the sidewalk in a way that allows the width of the sidewalk to adhere to all applicable laws and regulations, such as those imposed under the Americans with Disabilities Act (ADA);
- Regency and or its contractors will be responsible for all construction bid advertisements and selection. The bidding and selection activities shall adhere to the Durham Workforce Plan.

The revised scope would include the following additions/changes:

1. Duke Lighting cost --	\$	219,687.00
2. Engineering costs --	\$	40,000.00
3. GMP Streetscape work	\$	650,000.00
4. <u>Contingencies (20% of GMP)</u>	\$	130,000.00
Total Budget	\$	1,039,687.00

### **Guaranteed Maximum Streetscape Price**

Before being authorized to proceed with the construction of the public streetscape improvements, Regency must propose a Guaranteed Maximum Streetscape Price (GMSP) to the City based upon a finalized scope of work and design. The GMSP must be accepted by the City Manager as being a reasonable price for the final design of the streetscape scope of work before a notice to proceed can be given to Regency to

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<sup>1</sup> One issue that would impact the ability to implement the proposed project would be the effective date of a new Americans with Disabilities Act (ADA) law that is being proposed for federal highways maintained by the North Carolina Department of Transportation. Because Ninth Street is part of U.S. Highway 70, it would be impacted by the law, which is slated to stipulate that there be unabated six feet wide paths on sidewalks. This would impact the extent to which the sidewalks could be landscaped and the extent to which decorative benches and trash cans could be installed in the right of way. There is no timetable for when the law would be effective.

perform the work. Based upon the preliminary scope of work identified for the public streetscape improvements, the City estimates that the total engineering and construction costs will not exceed \$909,687.32. This includes design costs, Duke Energy lighting costs and preconstruction services costs.

### **Other Information**

In addition the City will endeavor to provide appropriate funding for a competitive matching economic development grant program within the Ninth Street district that would emphasize the lighting of storefronts, the enhancement of the pedestrian experience and the overall safety of Ninth Street. The funds to be made available for such program will be calculated based upon the incremental tax revenues to be derived from the private development projects described herein; the program would be fully administered by the City, through the OEWD. The allotment for such a program would be contingent upon annual budget availability and the needs of the area. The allotment is separate and apart from the proposed development agreement.

### **Alternatives**

The City Council could choose not to approve this development agreement and therefore, the City may forego the opportunity to implement necessary parking, infrastructure and aesthetic upgrades in the Ninth Street district. This opportunity forgone would not have impacted the existing general fund.

### **Financial Impact**

The City would borrow the monies needed to fund the public improvements as part of a planned bond issuance. The initial debt service payment beginning in fiscal year 2014 is estimated to be \$25,992.18. The initial debt service can be funded through OEWD existing FY 14 appropriations. Future debt payments in the amount of \$179,678.52 FY 15 through FY23 would come from incremental property tax generated from the adjoining private development. Anticipated annual property taxes are estimated to be \$338,809.53 per year, producing an anticipated net yield of \$159,131.01.

### **SDBE Requirements**

The Department of Equal Opportunity/Equity Assurance did not review this item for compliance with the Ordinance to Promote Equal Business Opportunity in City Contracting. The agreement will include provisions for the Durham Workforce Plan to be implemented for sub-contractors with contract values of \$200,000.00 or greater, which stipulates good faith efforts to use the Durham JobLink Career Center System to recruit construction workers.

**Attachments:**

1. CIP Ordinance
2. Ninth Street City Cash flow
3. Amendment to Development Agreement and Exhibit C (Revised 10-10-2013)